

Office of Chief Counsel  
Internal Revenue Service

**memorandum**

CC:LM:NR:DEN:POSTF-111503-02  
PJSewell

date: March 15, 2002

to: John Salazar, LMSB Group 1294  
Team Manager

from: Area Counsel  
(Natural Resources:Houston)

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subject: Request for LMSB Division Counsel Assistance - Authority to Sign  
Statute Extension for TEFRA Partnership

[REDACTED], LP  
EIN: [REDACTED]  
[REDACTED]

We have written this memorandum in response to your request for assistance dated February 22, 2002 regarding the identification of the proper person to sign Form 872-P on behalf of [REDACTED] LP. Simultaneously with the issuance of this advice to you, we will be sending it to the National Office for a ten day review under the Non-Docketed Significant Advice program. Please wait until this review is completed before acting on this advice. This memorandum should not be cited as precedent.

DISCLOSURE STATEMENT

This writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse affect on privileges, such as the attorney-client privilege. If disclosure becomes necessary, please contact this office for our views.

ISSUES

1. Whether [REDACTED] is the proper person to sign Form 872-P, Consent to Extend the Time to Assess Tax Attributable to Items of a Partnership, on behalf of [REDACTED] LP for the [REDACTED] taxable year?

2. What is the proper language that should be used on the Form 872-P to show the representative capacity of the signing

party?

### CONCLUSION

1. Yes, [REDACTED] is the proper person to sign Form 872-P in his representative capacity because he is an officer of the TMP of [REDACTED] LLC and [REDACTED], LLC is the TMP of [REDACTED] LP and [REDACTED] LP is the TMP of [REDACTED] LP for the [REDACTED] taxable year.

2. The Form 872-P should contain the following language to properly represent the representative signing capacity of [REDACTED]:

[REDACTED], Treasurer, [REDACTED] Inc. -  
EIN: [REDACTED] (formerly known as [REDACTED]  
Inc.), General Partner and Tax Matters Partner for the  
[REDACTED] taxable year of:

[REDACTED] LP, now known as [REDACTED] LLC - EIN:  
[REDACTED] (formerly known as [REDACTED]  
LLC, successor in interest to [REDACTED]  
LP, formerly known as [REDACTED] LP), General Partner  
and Tax Matters Partner for the [REDACTED] taxable year of:

[REDACTED] LP - EIN: [REDACTED]  
(formerly known as [REDACTED] LP),  
General Partner and Tax Matters Partner for the [REDACTED]  
taxable year of:

[REDACTED] - EIN: [REDACTED]

### FACTS

I have relied on the facts set out in this memorandum for my opinion in this case. If you believe that I should consider additional facts, you should notify me as this could change my opinion.

The taxpayer, [REDACTED] LP [hereinafter "[REDACTED]"] is a limited partnership organized in Delaware and engaged in the business of investing. On its U.S. Partnership Returns of Income, Form 1065, [REDACTED] designated [REDACTED] LP as the tax matters partner [hereinafter "TMP"] of the partnership for the [REDACTED], and [REDACTED] taxable years. Article [REDACTED] of the Limited Partnership Agreement designated the General Partner as the TMP; Article 1 defined "General Partner" as [REDACTED]

LP. For the [REDACTED] taxable year, [REDACTED] filed a final year return for the period [REDACTED] through [REDACTED].

[REDACTED] LP [hereinafter "[REDACTED]"] designated [REDACTED] Inc. as the TMP for the [REDACTED] taxable year on its Form 1065. However, [REDACTED] Inc. was not a partner of [REDACTED] during [REDACTED]. [REDACTED]'s Limited Partnership Agreement dated [REDACTED], set forth [REDACTED] LP as General Partner; section 11.3 designated the General Partner as the TMP. [REDACTED] LP held a [REDACTED]% interest in [REDACTED] [REDACTED] designated [REDACTED] LP (formerly known as [REDACTED] LP) as the TMP for the [REDACTED] taxable year on its Form 1065.

[REDACTED] LP designated [REDACTED] Inc. as the TMP for the [REDACTED] and [REDACTED] taxable years on its Forms 1065. [REDACTED] Inc. was a general partner of [REDACTED] LP.

On [REDACTED] [REDACTED] LP changed its name to [REDACTED] LP. On [REDACTED] [REDACTED] LP reorganized into [REDACTED] LLC.<sup>1</sup> On [REDACTED] [REDACTED] LLC changed its name to [REDACTED] LLC. All of these entities used the same EIN, [REDACTED].

On [REDACTED] [REDACTED] LP changed its name to [REDACTED] LP. Both entities used the same EIN, [REDACTED].

On [REDACTED] [REDACTED] Inc. changed its name to [REDACTED] Inc. Both entities used the same EIN, [REDACTED].

On [REDACTED] [REDACTED] LP filed an "Amended and Restated Limited Partnership Agreement." Section [REDACTED] designated the Chief Financial Officer of [REDACTED] LP as the TMP. The Chief Financial Officer was not a general partner of [REDACTED] LP.

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<sup>1</sup> Pursuant to Del. Code. Ann. tit. 6, §§ 17-219, 18-214 (2001), the converting entity shall not be required to wind up its affairs. Additionally, the conversion shall not be deemed to constitute a dissolution of the converting entity and shall constitute a continuation of the existence of the converting entity in the form of a domestic limited liability company. Finally, under the laws of Delaware, the limited liability company shall be deemed to be the same entity as the converting entity.

On [REDACTED], the Secretary of [REDACTED] [REDACTED] certified that [REDACTED] was appointed to serve as Principal and Chief Financial Officer of [REDACTED].

#### LEGAL DISCUSSION

I.R.C. § 6229(a) provides that the period for assessing any tax attributable to partnership items (or to affected items) with respect to any partner will not expire before three years from the later of the due date of the entity's return (without regard to extensions) or the date the entity's return is filed.

I.R.C. § 6229(b)(1)(B) allows the three year period to be extended with respect to all partners at any time during the initial three-year period by an agreement entered into by the Secretary and either the tax matters partner or "any other person authorized by the partnership in writing to enter into such an agreement."

I.R.C. § 6231(a)(7) provides that the TMP of any partnership is the general partner designated as the tax matters partner as provided in regulations, or if there has been no designation, the general partner having the largest profits interest in the partnership at the close of the taxable year involved.

Treas. Reg. § 301.6231(a)(7)-1(l)(1) provides that a designation of a TMP for a taxable year shall remain in effect until liquidation or dissolution of the TMP, if the TMP is an entity; the partnership items of the TMP become nonpartnership items under I.R.C. § 6231(c) (relating to special enforcement areas); resignation of TMP under paragraph (i); a subsequent designation under paragraph (d), (e), or (f); or a revocation of the designation under paragraph (j).

A partnership can replace a properly designated TMP by selecting a new TMP (in accordance with its procedure for selecting a TMP). The new selection will take effect when the replaced TMP certifies the selection of the new TMP by filing a statement with the Service. The current TMP shall make the certification by filing with the service center with which that partnership return is filed a statement that:

- (1) Identifies the partnership, the partner filing the statement, and the successor tax matters partner by name, address, and taxpayer identification number;
- (2) Specifies the partnership taxable year to which the designation relates;

(3) Declare that the partner filing the statement has been properly designated as the tax matters partner of the partnership for the partnership taxable year and that the designation is in effect immediately before the filing of the statement;

(4) Certifies that the other named partner has been selected as the tax matters partner of the partnership for that taxable year in accordance with the partnership's procedure for making that selection; and

(5) Is signed by the partner filing the statement.

Treas. Reg. § 301.6231(a)(7)-1(d).

I.R.C. § 6501(c)(4) provides that the Service and a taxpayer may consent in writing to an extension of the time for making an assessment if the consent is executed before the expiration of the normal period of assessment or the extension date agreed upon in a prior extension agreement between the parties.

I.R.C. § 6061 provides that any return, statement, or other document made under any internal revenue laws must be signed in accordance with the applicable forms and regulations.

The period of limitations within which to assess tax is generally governed by I.R.C. § 6501. In the case of tax attributable to adjustment of partnership items, the unified procedures of TEFRA and I.R.C. § 6229 apply. See Rhone-Poulenc Surfactants & Specialties, L.P. v. Commissioner, 114 T.C. 533 (2000). I.R.C. § 6229(b)(1)(B) provides that the period within which to assess tax attributable to partnership items may be extended on behalf of all partners by an agreement with the TMP. In determining the validity of a consent under I.R.C. § 6229(b)(1)(B), the requirements of I.R.C. § 6501 as well as those of I.R.C. § 6229(b) must be taken into account. In CC&F Western Operations Ltd. P'ship v. Commissioner, T.C. Memo. 2000-286, the court found that "[i]n drafting section 6229, Congress did not intend to create a completely separate statute of limitations for assessments attributable to partnership items. Instead, section 6229 merely supplements section 6501." Id. (citing Rhone-Poulenc, 114 T.C. at 545). Thus, the Service must comply with the requirements of I.R.C. § 6501(c)(4)(B) in securing a consent under I.R.C. § 6229(b)(1)(B).

I.R.C. § 6231(a)(7) provides that the TMP of any partnership is the general partner designated as the tax matters partner as provided in the regulations. [REDACTED] listed a non-partner as its TMP on its [REDACTED] Form 1065. As such, the designation of [REDACTED]

██████████, Inc. for ██████████ was invalid. Under Treas. Reg. §301.6231(a)(7)-1(m), the TMP for ██████████ would be ██████████ LP because it is the general partner with the largest profits interest; ██████████ LP held a █% interest in ██████████ at the close of ██████████. This TMP designation comports with ██████████'s Limited Partnership Agreement dated ██████████ in which ██████████ set forth ██████████ LP as its TMP.

On ██████████, ██████████ LP designated its CFO as the new TMP and then certified that ██████████ was the CFO. ██████████ was not a partner of ██████████. As such, this TMP designation was invalid and under Treas. Reg. § 301.6231(a)(7)-1(m), ██████████ LLC would be the TMP because it is the general partner with the largest profits interest at █%. No change in designation was filed with the Service under Treas. Reg. § 301.6231(a)(7)-1(d).

For the ██████████ tax year, the TMP of ██████████ was ██████████ LP, now known as ██████████ LP. The TMP of ██████████ LP was ██████████ LP, now known as ██████████ LLC (formerly known as ██████████ LLC, formerly known as ██████████ LP, formerly known as ██████████ LP). The TMP of ██████████ LP was ██████████, Inc., now known as ██████████, Inc. As Treasurer of ██████████, Inc., ██████████ is authorized to execute consents to extend the period of limitations on behalf of ██████████, Inc. See Rev. Rul. 83-41, 1983-1 C.B. 399, clarified and amplified, Rev. Rul. 84-165, 1984-2 C.B. 305 (providing that the president, vice-president, treasurer, assistant treasurer, chief accounting officer or any other officer duly authorized to act may sign consents to extend the statute on behalf of a corporation). ██████████ would be authorized to execute a Form 872-P because he is an officer of the TMP of ██████████, LLC and ██████████ LLC is the TMP of ██████████ LP and ██████████ LP is the TMP of ██████████. Thus, a consent for ██████████ signed by ██████████ would be effective and binding on the partners of ██████████.

The Form 872-P should contain the following language to properly represent the representative signing capacity of ██████████:

[REDACTED], Treasurer, [REDACTED] Inc. -  
EIN: [REDACTED] (formerly known as [REDACTED]  
Inc.), General Partner and Tax Matters Partner for the  
[REDACTED] taxable year of:

[REDACTED] LP, now known as [REDACTED] LLC - EIN:  
[REDACTED] (formerly known as [REDACTED]  
LLC, successor in interest to [REDACTED]  
LP, formerly known as [REDACTED] LP), General Partner  
and Tax Matters Partner for the [REDACTED] taxable year of:

[REDACTED] LP - EIN: [REDACTED]  
(formerly known as [REDACTED] LP),  
General Partner and Tax Matters Partner for the [REDACTED]  
taxable year of:

[REDACTED] - EIN: [REDACTED]

This language should be placed on the face of the first page of  
the Form 872-P.

If you have any questions on this matter, please call me at  
(303) 844-2214 ext. (b)(6).

DAVID J. MUNGO  
Associate Area Counsel (LMSB)

By: \_\_\_\_\_  
PAMELA J. SEWELL  
Attorney (LMSB)

Attn: Joni Politzer, Revenue Agent, LMSB Group 1294